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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter of	)	
Implementation of Section 301 (j) of the	)	
Telecommunications Act of 1996	)	CS Docket 96-57
	)	
Aggregation of Equipment Costs	)	
By Cable Operators	)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION
IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING

JOT D. CARPENTER, JR.
VICE PRESIDENT
TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1201 PENNSYLVANIA AVENUE N.W. #315
WASHINGTON, D.C. 20044-0407

APRIL 12, 1996

SUMMARY

The Telecommunications Industry Association ("TIA"), which has a membership of nearly 600 U.S. companies which manufacture and provide communications and information technology equipment, products, systems, distribution services and professional services throughout the world, urges the Commission to implement the requirements of Section 301 (j) of the Telecommunications Act of 1996 ("1996 Act") in a manner that affords maximum flexibility to cable operators. By providing cable operators with maximum flexibility, the Commission can encourage investment in advanced infrastructure and digital services, and thereby help ensure that the goal of the 1996 Act is achieved.

With the goal of maximum flexibility in mind, the TIA urges the Commission:

- not to adopt a "primary purpose" test;
- to permit the aggregation of additional connections with initial connections; and
- to permit the geographic aggregation of installation costs to the same extent as the geographic aggregation of equipment costs.

TIA notes that failure to afford this type of regulatory flexibility would needlessly prolong the "regulatory investment deficit" and deprive American consumers of access to advanced telecommunications capabilities.

Before the
Federal Communications Commission
Washington, D.C. 20554

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Comments of Telecommunications Industry Association

The Telecommunications Industry Association ("TIA") hereby comments on the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding , FCC CS Docket 96-57, released March 20, 1996. The TIA has a membership of nearly 600 U.S. companies which manufacture and provide communications and information technology equipment, products, systems, distribution services and professional services throughout the world.

* * * * *

The primary purpose of the Telecommunications Act of 1996 ("1996 Act") is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans. . . ."[1] To achieve this goal will require massive investment in new plant, infrastructure, and customer equipment. With respect to the cable industry, such investment can best be encouraged by a two-pronged strategy of deregulating cable service and eliminating the "regulatory investment deficit." The 1996 Act establishes a schedule for deregulation of cable service[2], and the Commission can take steps to ease the "regulatory investment deficit" by implementing the requirements of § 301 (j) of the 1996 Act in a manner that affords maximum flexibility to cable operators to average their equipment costs.

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[1]S. Rep. 230, 104th Congress, 1st Session 1 (1995).

[2]The 1996 Act sunsets rate regulation of the cable programming services tier on March 31, 1999, except that such services provided by small cable systems, i.e., those with less than one percent of all cable subscribers, were deregulated on the date of enactment of the 1996 Act.

The "regulatory investment deficit" developed when, in anticipation of revenue reductions of uncertain magnitude, cable operators diminished their investment in infrastructure in the period preceding enactment of the 1992 Cable Act. In the five-year period between 1990 and 1994, the peak for cable investment was in 1990, when investment totaled $10.552 billion. As it became apparent that the 102nd Congress would impose rate regulation on the industry, cable operators assumed a defensive posture in 1991 and 1992, when investment bottomed out at just $8.9 billion. Although investment has begun to recover in the post-Cable Act period, it still has not equaled the levels which could reasonably have been expected in the absence of re-regulation.[3]

The "regulatory investment deficit" must be eliminated if cable operators are to play an important role in building the information infrastructure that America will need to compete in the 21st century. Cable operators that embrace the challenge of building the information infrastructure should enjoy maximum regulatory flexibility as they seek to upgrade their facilities from one-way, analog systems to two-way, digital broadband systems capable of carrying telephony and other types of interactive services.[4]

With this goal of maximum flexibility in mind, we urge the Commission:

- not to impose a "primary purpose" test;
- to permit the aggregation of additional connections with initial connections; and
- to permit the geographic aggregation of installation costs to the same extent as the geographic aggregation of equipment costs.

Failure to afford cable operators this type of regulatory flexibility would needlessly exacerbate and prolong the "regulatory investment deficit," thereby depriving American consumers of access to advanced telecommunications capabilities. The Commission should not undercut, through regulation, either the deregulatory thrust of the 1996 Act or the Congress's goal of promoting the deployment of advanced technology and digital services.

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[3]See attachments.

[4]H.R. Rep. 204, 104th Congress, 1st Session 107 (1995). The purpose of the equipment averaging provision is "to promote the development of a broadband, two-way telecommunications infrastructure."

The "primary purpose" test has no basis in either the statute or the legislative history. If Congress intended for such a test to apply, it had ample opportunity to amend the equipment aggregation provision, which surfaced early in the House consideration of the legislation. Neither body nor the joint House-Senate conference committee choose to do so, in recognition that cable operators seeking to deploy advanced technology and digital services undertake a significant financial risk. Beyond being inconsistent with the 1996 Act, the "primary purpose" test raises more questions than it answers.[5] The impact of such a test will be to slow down the deployment of technologies and services which the Congress intended to encourage by the 1996 Act.

The rationale for excluding additional connections and installations from broader aggregation[6] is similarly dubious. This proposal runs counter to existing Commission rules and the plain language of the 1996 Act. Under the Commission's existing rules, the charges for initial connections and additional connections are already derived largely from the same pool of costs: 1) the operator's equipment basket includes the costs for installations of both initial and additional connections;[7] and 2) the same hourly service charge ("HSC") is used to calculate the installation rate for both initial connections and additional connections.[8] Moreover, the 1996 Act is clear that aside from equipment used by basic-only subscribers, cable operators may

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[5]Such questions include:

- What if a cable operator deploys advanced or digital technology and consumers opt not to subscribe. Would the Commission rule that the "primary purpose" of the advanced or digital equipment is for existing analog services, simply because consumers refused to subscribe to the advanced or digital services?
- How will the Commission determine the operator's "purpose" for deploying equipment?
- How will the "primary purpose" test be administered and enforced, particularly in a world in which customer equipment is increasingly multi-purpose?

[6]Notice at ¶ 10.

[7]47 C.F.R. § 76.923 (c).

[8]47 C.F.R. § 76.923 (e), (g).

aggregate into broad categories the costs for all other customer equipment, including any equipment used with additional outlets. The only result of disallowing aggregation of these costs until that time will be to delay the deployment of new technology and services.

Finally, the Notice's proposal to limit geographic aggregation of installation costs[9] should be rejected. Given that a cable operator's installation costs and HSC are integrally related to the lease charge for customer equipment, any limitations that are placed on the former will effectively limit the benefits of cost aggregation. In addition, establishing different levels of geographic aggregation for installation costs and equipment costs will prevent cable operators from "bas[ing] equipment charges on the same aggregation level as their costs."[10] To avoid these problems, the Commission should allow cable operators to aggregate their installation costs to the same extent they are permitted to aggregate their equipment costs, i.e., on a franchise, system, regional, or company-wide basis.

* * * * *

The TIA's member companies are providing the most advanced technologies and equipment to service providers in both industrial and developing countries around the world. When service providers in these countries deploy new or upgrade cable plant, they want and demand the most advanced technology and equipment offered by American companies. If the United States is to continue to have the most advanced communications infrastructure in the world -- and that appears to be the intent behind the 1996 Act -- then the regulatory scheme under which the industry operates must become more deregulatory. Otherwise, capital needed for investment in the U.S. infrastructure will flow out of the U.S. to places like the Pacific Rim, where investors can earn a better return on their investment.

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[9]Notice at ¶ 12.

[10]Notice at ¶ 9.

The TIA urges the Commission to bear this in mind and take a more deregulatory approach in implementing the cable equipment aggregation provisions of the 1996 Act. Doing so will help to alleviate the "regulatory investment deficit" and ensure that the American consumer has access to the most advanced communications infrastructure in the world.

Respectfully submitted,

Telecommunications Industry Association

Jot D. Carpenter, Jr.
Vice President for Government Relations
Telecommunications Industry Association
1201 Pennsylvania Avenue N.W. #315
Washington, D.C. 20004

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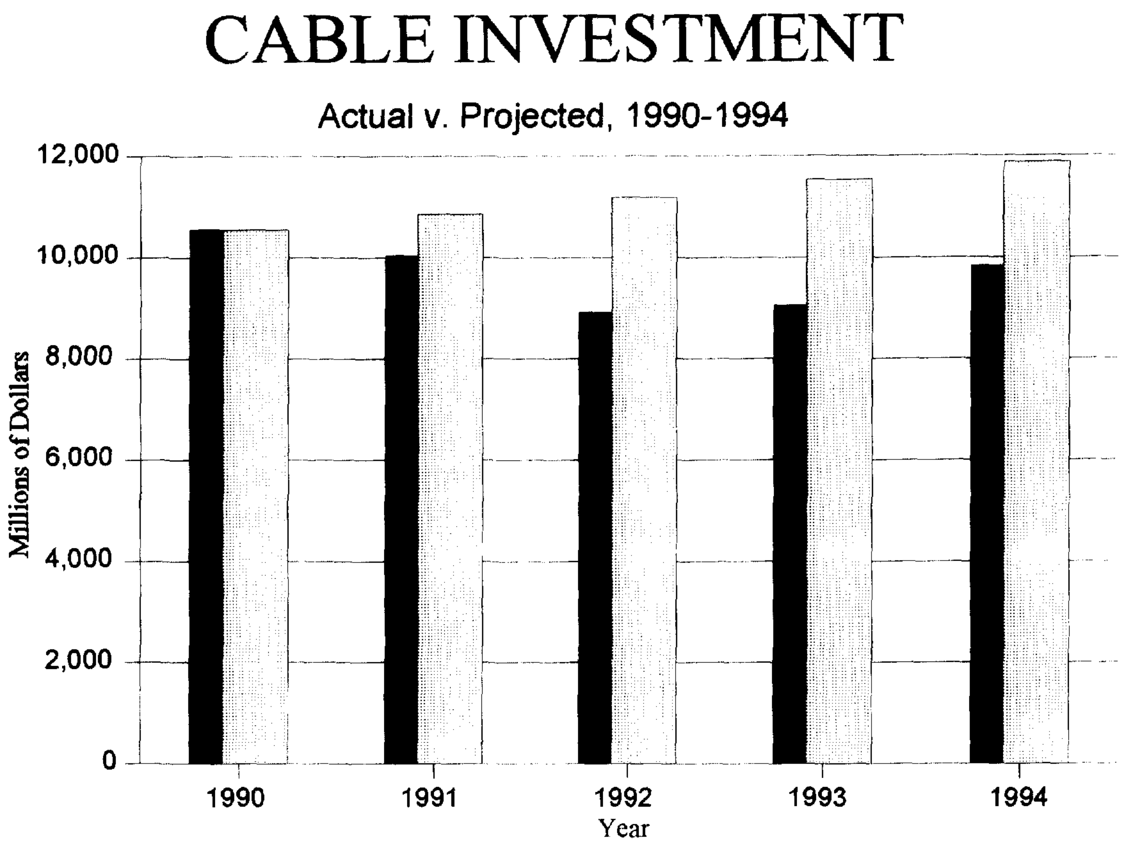
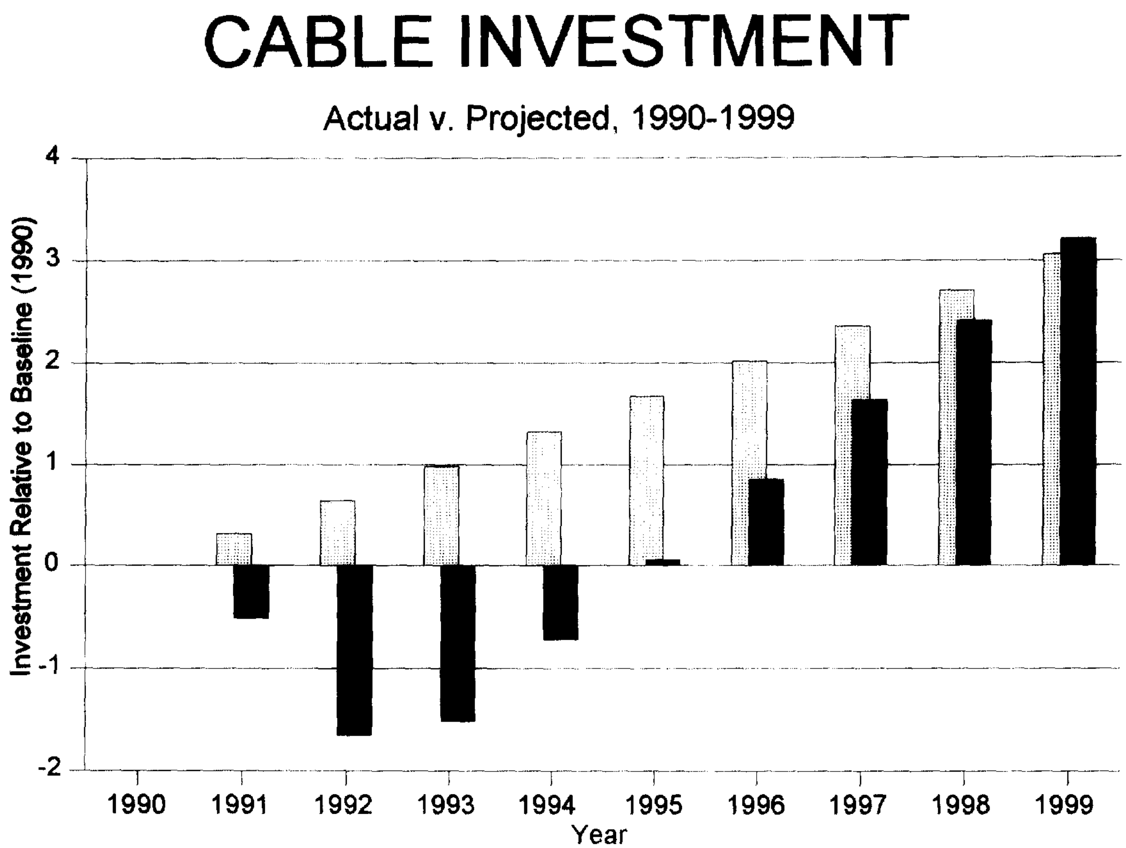
The "Regulatory Investment Deficit"

On the charts below, the darker columns represent actual total cable investment; the lighter columns represent projected cable investment, assuming a modest three percent annual increase (generally consistent with the inflation rate) and no rate regulation.



As chart 1 demonstrates, cable rate regulation -- and even the threat of cable rate regulation -- has had a profoundly negative effect on cable investment over the five years surrounding passage of the 1992 Cable Act. The peak for the five year period between 1990 and 1994 was in 1990, when cable investment totaled $10.552 billion. In 1991 and 1992, the possibility that the 102nd Congress would impose rate regulation drove the industry into a defensive posture, and total investment dropped. Investment bottomed-out in 1992, when total investment equaled just $8.9 billion -- 16 percent less than in 1990. Since 1992, cable investment has recovered, albeit slowly, to total $9.827 billion in 1994. This figure is seven percent lower than the 1990 total. (Source for investment data: Paul Kagan Associates, 1994.)

The impact of rate regulation becomes even more apparent when projected levels of cable investment are considered. Assuming that there had been a modest three percent annual increase in total cable investment, no effort to re-regulate the cable industry, and no corresponding reaction on behalf of cable providers and the capital markets, total investment at the end of the five-year period ending in 1994 should have equaled almost $11.9 billion, instead of just $9.8 billion, a differential of 18 percent. This differential actually represents an improvement over the differentials between actual v. projected



investment for 1992 and 1993, when the differentials were 20.5 and 21.6 percent, respectively. Accordingly, it is reasonable to conclude from actual and projected investment levels that cable rate regulation significantly depressed investment during the periods preceeding and following enactment of the 1992 Cable Act.

Chart 2 demonstrates that, under current law, it will take until 1999 for actual cable investment to surpass the level of investment which might reasonably been expected had rate regulation not been imposed. The chart uses 1990 actual investment figures as a baseline, and assumes that current growth rates will be maintained.

Chart 3 illustrates construction spending by cable operators during the 1986-1993 period. Again, it demonstrates that the threat of regulation drove capital out of the U.S. market, creating a "regulatory investment deficit." (Source for construction data: Scientific-Atlanta.)

Construction Spending by Cable TV Companies